

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-08-SE-526
Corr Wireless Communications LLC	)	NAL/Acct. No. 200932100057
	)	FRN # 0003804101

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 8, 2009****Released: May 11, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Corr Wireless Communications LLC ("Corr"), licensee of Common Carrier Fixed Point-to-Point Microwave stations WMV851 and WPJD282, apparently liable for a forfeiture in the amount of six thousand four hundred dollars (\$6,400) for operating its stations on unauthorized frequencies in apparent willful and repeated violation of Section 1.903(a) of the Commission's Rules ("Rules").<sup>1</sup>

**II. BACKGROUND**

2. On January 23, 2001, Corr was granted a Common Carrier Fixed Point-to-Point Microwave license under call sign WMV851 to operate, *inter alia*, on frequency 2115.20 MHz with an authorized bandwidth of 3.5 MHz.<sup>2</sup> Also on January 23, 2001, Corr was granted a Common Carrier Fixed Point-to-Point Microwave license under call sign WPJD282 to operate, *inter alia*, on frequency 2165.20 MHz with an authorized bandwidth of 3.5 MHz.<sup>3</sup>

3. The Enforcement Bureau received a complaint alleging that Corr Wireless was operating its microwave stations WMV851 and WPJD282 on unauthorized frequencies. On July 31, 2008, the Spectrum Enforcement Division of the Enforcement Bureau sent a Letter of Inquiry ("LOI") to Corr requesting that the licensee respond to the allegations raised by the complaint.<sup>4</sup> Corr responded to the LOI on September 2, 2008.<sup>5</sup> In its Response, Corr states that on June 16, 2008, it discovered that station WMV851 was operating on frequency 2118.5 MHz and that station WPJD282 was operating on frequency 2168.45 MHz,<sup>6</sup> neither of which is an authorized frequency. Corr explains that it has not been

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<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> See File No. 0000288862 (renewal application granted January 23, 2001).

<sup>3</sup> See File No. 0000288863 (renewal application granted January 23, 2001).

<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Bryan A. Corr, Sr., President and CEO, Corr Wireless Communications LLC (July 31, 2008).

<sup>5</sup> See Letter from Donald J. Evans, Counsel for Corr Wireless Communications LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (September 2, 2008) ("Response").

<sup>6</sup> *Id.* at 1.

able to determine when the stations began operating on the unauthorized frequencies.<sup>7</sup> Corr further states that until late 1996, it had been authorized to operate stations WMN213 and WMN214 on frequencies 2118.5 MHz and 2168.45 MHz, respectively, and believes that a technician recently installed old modules tuned to these frequencies into the transmitters for stations WMV851 and WPJD282 without realizing that these transmitters were authorized to operate on different frequencies. Corr further states that as soon as it discovered the stations were operating on unauthorized frequencies, it took immediate steps to divert traffic to alternative paths and shut down the transmitters.<sup>8</sup> Since Corr discovered that its stations were operating on unauthorized frequencies, it states that it has taken affirmative steps to ensure that such an incident does not occur again, including: conducting a system-wide review of its transmitting stations to determine if any other stations were operating at variance; posting the authorized frequencies on each transmitting unit; and requiring personnel who access locked transmitter sites to log in the dates and times of their visits.<sup>9</sup> Corr indicates that the transmitters for both stations have been returned to service on the correct frequencies.<sup>10</sup>

### III. DISCUSSION

#### A. Operation on Unauthorized Frequencies

4. Section 1.903(a) of the Rules prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.<sup>11</sup> Corr admits that it operated its fixed point-to-point microwave stations WMV851 and WPJD282 on unauthorized frequencies for an undetermined period of time ending on June 16, 2008. Accordingly, we find that Corr apparently willfully<sup>12</sup> and repeatedly<sup>13</sup> operated stations WMV851 and WPJD282 in violation of Section 1.903(a) of the Rules.

#### B. Proposed Forfeiture

5. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>14</sup> To impose

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<sup>7</sup> *Id.* at 2. Because Corr received no complaints of interference, Corr states it assumes that the problem was of relatively short duration.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> 47 C.F.R. § 1.903(a).

<sup>12</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>13</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>14</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>15</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>16</sup> We conclude under this standard that Corr is apparently liable for forfeiture for its apparent willful and repeated violation of Section 1.903(a) of the Rules.

6. The Commission's *Forfeiture Policy Statement*<sup>17</sup> and Section 1.80(b) of the Rules<sup>18</sup> establish a base forfeiture amount of four thousand dollars (\$4,000) for operation on an unauthorized frequency.<sup>19</sup> Corr concedes that it operated stations WMV851 and WPJD282 on unauthorized frequencies. We find that Corr's operation of each of these stations on an unauthorized frequency is a separate violation, subject to a separate proposed forfeiture of \$4,000. We accordingly conclude that Corr is apparently liable for a total proposed forfeiture of \$8,000 for these violations.

7. Corr asserts that it was unaware that stations WMV851 and WPJD282 were operating on unauthorized frequencies and speculates that one of its technicians may have unknowingly caused the unauthorized operations. As a Commission licensee, however, Corr is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. In this regard, the Commission has long held that a downward adjustment of a forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors.<sup>20</sup> Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"<sup>21</sup> and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."<sup>22</sup> Accordingly, we find that no reduction of the proposed forfeiture is warranted on this basis. Additionally, Corr claims to have operated scores of transmitting stations over 20 years with no previous incident of this kind. We note, however, that the Bureau recently found Corr in violation of the Commission's rules in an unrelated matter.<sup>23</sup> We therefore decline to reduce the proposed forfeiture amount based upon Corr's claim of past

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>16</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>17</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>18</sup> 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

<sup>19</sup> The base forfeiture amount is \$10,000 for construction and/or operation without an instrument of authorization for the service. *Id.* Because Corr holds valid authorizations for the service, we find this base amount to be inapplicable.

<sup>20</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

<sup>21</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>22</sup> See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

<sup>23</sup> See *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11567, 11570 (Enf. Bur. Spectrum Enf. Div., 2008) (finding that Corr apparently willfully and repeatedly violated former Section 20.19(d)(2) of the Rules by failing to include in its digital wireless handset offerings at least two models that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006), *response pending*.

compliance.<sup>24</sup> We do find, however, that a downward adjustment of the proposed forfeiture from \$8,000 to \$6,400 is warranted because Corr undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.<sup>25</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act<sup>26</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>27</sup> Corr Wireless Communications LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for the willful and repeated violation of Section 1.903(a) of the Rules.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>28</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Corr Wireless Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Corr will also send an electronic notification on the date said payment is made to Jackie.Ellington@fcc.gov and JoAnn.Lucanik@fcc.gov.

11. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial

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<sup>24</sup> Although Section 504(c) of the Act, 47 U.S.C. § 504(c), prohibits us from relying on the issuance of a prior NAL that has not been paid or finally adjudicated in district court to the prejudice of the party, we are not barred from considering the underlying facts from a prior unpaid NAL in assessing the appropriate forfeiture amount. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17102-04; see also *Infinity Radio Operations, Inc.*, Order on Review, 22 FCC Rcd 9824, 9826-9828 (2007).

<sup>25</sup> See, e.g., *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004).

<sup>26</sup> 47 U.S.C. § 503(b).

<sup>27</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>28</sup> 47 C.F.R. § 1.80.

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Donald J. Evans Esq., counsel for Corr Wireless Communications LLC, Fletcher, Heald, & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau